

### **REMARKS**

The Office Action mailed October 16, 2008 has been received and the Examiner's comments carefully reviewed. Claims 1 and 14 have been amended. Claims 20-29 have been added. No new subject matter has been added. Support, for the amendments to claims 1 and 14, is found in the specification, for example, on page 6 at lines 20-25. Support for new claims 20-29 is found in the specification and original claims, for example, on page 9 at lines 18-20.

Claims 1-8, 14-16, and 20-29 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

### **Priority**

The priority has been timely claimed, is noted on the Filing Receipt of the present application, mailed March 3, 2008 and is correct.

### **Claim Objections**

Claim 1 is objected to because of a typographical error. The error has been corrected and withdrawal of this objection is respectfully requested.

### **Rejections Under 35 U.S.C. §102**

Claims 1, 2 and 14-16 are rejected under 35 U.S.C. §102(a) as being anticipated by Collins (GB 2384704 A). The curvature of the surfaces of the prior art structure is different than the curvature of the elements of claimed invention. Applicants respectfully traverse this rejection, but have amended claims 1 and 14 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter in a continuing application.

Collins discloses a spatula 1 including an operative portion 2 and a handle portion 3. The handle portion 3 is arcuate; "[t]he operative portion 2 is also arcuate but opposite to the handle." Abstract. In use, the operative portion 2 is used to apply a composition over the skin; the spatula is then re-oriented and the edge 2a is scraped along the skin to collect the composition on the concave surface of the operative portion 2. See, the figures and page 6, lines 1-8. The operative portion has a curvature opposite to the handle.

Each of independent claims 1 and 14 recites a device including a non-shaving head and a handle. Both the non-shaving head and the handle have a concave curvature profile relative to the skin during use. The curvature of the head and handle are similar in orientation.

Collins does not disclose a spatula with similarly oriented curvature. In other words, Collins does not show both a concave operative portion 2 and a concave handle portion 3. While the operative portion 2 has a concave curvature during use in removing a composition, the curvature of the handle portion 3 is, however, opposite to that of the spatula and is convex.

At least for this reason, Applicants respectfully submit that independent claims 1 and 14, and dependent claims 2 and 15-16 are novel and in condition for allowance.

### **Rejections Under 35 U.S.C. §103**

Claims 3-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Collins (GB 2384704 A). Applicants respectfully traverse this rejection.

Claims 3-8 depend upon claim 1. In view of the remarks regarding independent claim 1, further discussion regarding the independent patentability of dependent claims 3-8 is believed to be unnecessary. Applicants submit that dependent claims 3-8 are in condition for allowance.

### **New Claims 20-29**

#### **A. New Claim 20**

Claim 20 depends upon claim 1. At least for the reasons discussed above with regards to claim 1, Applicants respectfully submit that claim 20 is patentable.

In addition, the cited art does not teach or suggest a device having both a non-shaving head and a handle each with concave curvatures, and further an upwardly opening notch, as characterized in claim 20. As can be understood, the concave handle, combined with the notch, permits a user to apply greater force to the leading or removing edge of the non-shaving head, as opposed to a convex handle, for example; and the upward opening notch limits the articulation of the non-shaving head when increasing force is applied.

As articulated by the Supreme Court in *KSR Int'l Co. v. Teleflex*, a combination can be obvious if it is no more than the predictable use of known elements according to their established functions and there was a reason to combine the known elements. However, it is improper to simply vary all parameters or try each of numerous possible choices, where the prior art gives no indication of which parameters are critical or no direction as to which of many possible choices is likely to be successful. See MPEP 2145(X)(B). It is submitted that for this reason, modifying the cited art to include both an upward opening notch and the dual concave constructions to improve the removal operation, as recited in claim 20, is not obvious.

For these additional reasons, Applicants respectfully submit that dependent claim 20 is patentable.

B. New Claims 21-29

New claim 21 recites a device having a non-shaving head, a handle, and a joint located between the head and the handle. The joint has an upward opening that closes when an increasing downward force is applied to the handle.

None of the cited art discloses the limitations recited in independent claim 21. For example, Collins discloses a device that, during use to effect the removal of a composition, has a downward opening hinge 4. The downward opening hinge 4 accordingly opens when an increasing downward force is applied to the handle portion 3. As can be understood, the downward opening hinge 4 of Collins does not limit the extent to which the operative portion 2 of the spatula can be flexed. In contrast, the upward notch arrangement of the claimed device limits the extent of articulation of the head by the closing of the notch.

Applicants respectfully submit that claims 21-29 are in condition for allowance.

**SUMMARY**

It is respectfully submitted that each of the presently pending claims (claims 1-8, 14-16, and 20-29) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed

telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct.

Applicants reserve the right to raise these arguments in the future.



Date: January 14, 2009

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

A handwritten signature in dark ink, appearing to read "Karen A. Fitzsimmons". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Karen A. Fitzsimmons

Reg. No. 50,470

KAF:cjc